



DEPARTMENT OF THE NAVY  
OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
2000 NAVY PENTAGON  
WASHINGTON, DC 20350-2000

IN REPLY REFER TO

OPNAVINST 3128.9D  
N3L/N5L  
05 April 2000

OPNAV INSTRUCTION 3128.9D

From: Chief of Naval Operations

Subj: DIPLOMATIC CLEARANCE FOR U.S. NAVY MARINE DATA COLLECTION  
ACTIVITIES IN FOREIGN JURISDICTIONS

Ref: (a) OPNAVINST C3128.3S (NOTAL)  
(b) OPNAVINST 3710.2E  
(c) USAF Foreign Clearance Guide (FCG)  
(d) UN Convention on the Law of the Sea (UNCLOS)  
(e) DoD 2005.1-M (Maritime Claims Reference Manual) of Jan  
97 (NOTAL)  
(f) OSD Notice to Research Vessel Operators No. 61 (NOTAL)  
(g) OSD Notice to Research Vessel Operators No. 67 (NOTAL)  
(h) OSD Notice to Research Vessel Operators No. 68 (NOTAL)

Encl: (1) Template Diplomatic Clearance Request Message to Fleet Commanders for  
Military/Hydrographic Survey  
(2) Template Diplomatic Clearance Request To USDAO For Military/Hydrographic  
Survey  
(3) Template Request for Rapid Littoral Survey Exercise Agreement

1. Purpose. To provide guidance for determining requirements and procedures for requesting diplomatic clearance for marine data collection activities by Department of the Navy (DON) marine data collection assets in or over foreign territorial seas, archipelagic waters, or exclusive economic zones.

2. Cancellation. OPNAV Instruction 3128.9C and report symbols OPNAV 3128-5 and 3128-6. This instruction has been completely rewritten and should be read in its entirety.

3. Scope

a. This instruction applies to sponsoring commands, offices, and commanders exercising control over operations of the type described in paragraph 1.

b. This instruction does not apply to:

- (1) Intelligence Operations;
- (2) Activities of civilian oceanographic institutions that are operating ships or aircraft owned by the U.S. Navy, but are leased or bonded to academic institutions; and

(3) Operation of navigation, meteorological, telecommunication, and similar data gathering instruments used in the normal course of navigation. Use of such instruments does not require coastal State consent, regardless of the location.

c. References (a) through (d) contain separate procedures for obtaining diplomatic clearance for ship port visits and aircraft flights to or within foreign countries. These instructions do not apply to marine data collection activities.

#### 4. Definitions

a. Marine Data Collection. Marine data collection is a general term used when referring to all types of survey or marine scientific activity, i.e., military surveys, hydrographic surveys and marine scientific research.

b. Military Survey. Military survey refers to activities undertaken in the ocean and coastal waters involving marine data collection (whether or not classified) for military purposes. Military surveys can include oceanographic, hydrographic, marine geological, geophysical, chemical, biological, acoustic, and related data.

c. Hydrographic Survey. Hydrographic survey includes determination of one or more of the several classes of data -- depth of water, configuration and nature of the natural bottom, direction and force of currents, heights and times of tides and water stages, and hazards to navigation -- for the production of nautical charts and similar products to support safety of navigation.

d. Marine Scientific Research (MSR). MSR refers to activities undertaken in accordance with part XIII of the United Nations Convention on the Law of the Sea (UNCLOS) in the ocean and coastal waters whose purpose is to expand general scientific knowledge of the marine environment. MSR activities undertaken include: physical and chemical oceanography, marine biology, fisheries research, scientific ocean drilling and coring, geological/geophysical studies, as well as other activities with a scientific purpose. The results of marine scientific research are generally made publicly available.

e. Rapid Littoral Surveys. Rapid Littoral Surveys are short term, limited scope surveys conducted in response to emergent requirements within foreign territorial seas. The survey will typically consist of a small team of U.S. government surveyors working in cooperation with the host country.

#### f. Baselines

(1) Normal Baselines. The normal baseline for measuring the breadth of the territorial sea (and other maritime zones) is the low-water line along the coast.

(2) Straight Baselines. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, international law allows a State to claim straight baselines drawn in accordance with established criteria from which the breadth of its maritime zones may be measured.

g. Territorial Sea. A belt of sea adjacent to a coastal State measured seaward from baselines determined in accordance with international law up to a maximum breadth of 12 nautical miles. The coastal State enjoys full sovereignty of water and airspace in the territorial sea.

h. Exclusive Economic Zone (EEZ). An area beyond and adjacent to the territorial sea, extending up to 200 nautical miles from the baselines determined in accordance with international law. The coastal State enjoys sovereign rights over resource-related matters, and has jurisdiction over artificial islands, marine scientific research, and matters related to protection and preservation of the marine environment in the EEZ.

i. Archipelagic State/Archipelagic Waters. An archipelagic State is constituted wholly of islands whose waters are enclosed by baselines, drawn in accordance with international law, that connect the outermost points of the archipelago's outer islands. Strict land-water ratios must be met for a State to legally claim archipelagic status.

j. High Seas. The high seas include all parts of the sea that are not included in the EEZ, territorial sea, internal waters, or archipelagic waters of a State.

k. Continental Shelf. The continental shelf of a coastal State consists of the seabed and subsoil of the submarine areas that extend beyond its territorial sea to the outer edge of the continental margin. The coastal State enjoys sovereign rights over the natural resources and has jurisdiction over marine scientific research on the continental shelf, but has no sovereign rights or jurisdiction over the superjacent water column and air space of that part of the continental shelf that lies outside of 200 nautical miles.

## 5. UNCLOS Background and Considerations

a. The distinction among MSR, military surveys and hydrographic surveys are important because of regulating provisions contained in reference (d). Under UNCLOS, Coastal States may regulate MSR in their EEZ. The U.S. Government, though, recognizes military survey and hydrographic survey as high seas freedoms separate from MSR. Thus, military survey and hydrographic survey are not subject to coastal State consent otherwise applicable to MSR in foreign EEZs and on foreign continental shelves.

b. Currently, not all nations accept this interpretation. Therefore, to promote universal acceptance of this interpretation, DON must consistently distinguish between military or hydrographic surveys and MSR. The following

guidelines must be adhered to:

- (1) Notifications and requests for consent (diplomatic clearance) shall not be made for military or hydrographic survey conducted within foreign EEZs;
- (2) If a military or hydrographic survey is planned to occur in both a territorial sea and EEZ, diplomatic clearance shall be requested only for that portion of the military or hydrographic survey occurring inside the territorial sea;
- (3) U.S. Navy marine data collection assets shall not combine MSR activity with military survey or hydrographic survey operations;
- (4) Data collected within foreign EEZs by military or hydrographic survey activity may not be published later as MSR; and
- (5) Messages requesting clearance for military or hydrographic survey shall not use the terms "scientist" or "researcher," but rather use "surveyor" or "hydrographer."

c. UNCLOS established the right of States to claim a territorial sea to a maximum breadth of 12 nautical miles and an EEZ to a maximum of 200 nautical miles from legally established baselines. The U.S. recognizes these limits. The actual maritime claims of coastal States are provided in references (e) and (f), which should be consulted in the planning of operations within these areas.

## 6. Diplomatic Clearance Request Procedures

a. Military and Hydrographic Survey Procedure. Diplomatic clearance shall be requested for military and hydrographic survey conducted within U.S. recognized territorial seas and archipelagic waters of a foreign nation.

(1) Message Requests. The U.S. Navy organization exercising operational control over the survey activity shall use enclosure (1) to initiate the request for diplomatic clearance. Requests will be submitted via the operational chain of command to the cognizant naval component commander, who will obtain the diplomatic clearance from the appropriate United States Defense Attache Office/American Embassy (USDAO/AMEMBASSY), using enclosure (2) as a template. Information addressees will include Chief of Naval Operations (CNO) (N3/N5), CNO (N096), CNO (N3L/N5L), State Department (OES), and applicable addressees as noted in reference (a). (Note: Diplomatic Clearance for marine data collection is handled differently than naval port visits and exercises in most countries. Care should be taken to ensure that the foreign Ministry of Foreign Affairs or appropriate level of government grants the diplomatic clearance approval.) Requests will be submitted separately from other Concept of Operations (CONOPS) or exercise request messages.

(2) Technical Specifications. In order to expedite review, the command exercising project control shall forward and/or make available amplifying technical specifications, which shall include a chart of suitable scale depicting the tracks and location of operations, to all appropriate addressees.

b. Marine Scientific Research

(1) U.S. Navy-sponsored marine scientific research is normally conducted by civilian research vessels under the sponsorship of the Office of Naval Research. The operator of the vessel conducting the research will request diplomatic clearance using the guidelines provided by the Department of State (reference (g)).

(2) Questions as to whether an operation conducted by a U.S. Naval vessel is classified as marine scientific research or military survey shall be addressed to CNO(N096).

c. Rapid Littoral Survey Clearance Requests. Clearance and permission to conduct a Rapid Littoral Survey will be obtained with an exercise agreement. Exercise agreements involve an exchange of diplomatic notes at the embassy level and are coordinated through the Foreign Military Rights and Affairs Office of the Secretary of Defense (OSD(FMRA)). The U.S. Navy command initiating the survey will use enclosure (3), as a template to request that CNO (N096) initiate the agreement. CNO (N096) will coordinate the procedure with Navy Judge Advocate General International and Operational Law Division (Code 10) and CNO (N3/N5), who will coordinate such agreements with OSD, Joint Staff (JS), and State as necessary.

d. Lead time requirements. State Department lead-time requirements differ depending on the State involved, and are listed in reference (h). Requests should be submitted at least 30 days in advance of these deadlines. Concurrence will be assumed unless otherwise notified within 21 days.

e. Modification of Approved Operations. Proposed modifications to approved operations must be submitted by message following the same procedures described above.

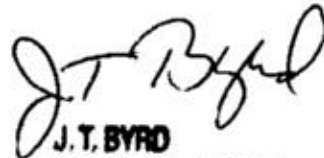
f. Inquiries. Inquiries concerning the appropriate categorization of marine data collection activity and the need for diplomatic clearance should be addressed to CNO (N096), who will coordinate, as necessary, with CNO (N3L/N5L) and the Department of State. Inquires concerning the extent of coastal State claims should be addressed to CNO (N3L/N5L) and Navy JAG (Code 10).

7. Aircraft and Balloons. The requirements of paragraph 6a apply for all airborne offshore marine data collection activities. Diplomatic clearance does not eliminate the need for fulfilling normal overflight requirements, e.g., Notices to Airmen (NOTAMs), flight plans, etc. References (b) and (c) contain information on flights to or within foreign countries.

8. Classification

a. For projects involving classified information, the command or agency exercising project control must clear all releases of classified information with the appropriate originating control authority (OCA) and/or the Navy International Programs Office (IPO), as appropriate.

b. Requests, information, reports, and messages on this subject should be appropriately classified, especially with regard to requesting clearance into politically sensitive areas. Information about prospective operations in areas of foreign jurisdiction should not be made public until after diplomatic clearance has been granted. Requests from the host country for cooperative or simultaneous public releases and such other specific limitations which accompany the clearance will normally be complied with. However, nothing in this paragraph is intended to alter, modify, or contravene existing directives concerning the public release of information.



**J. T. BYRD**  
Rear Admiral, U.S. Navy  
Assistant Deputy Chief of Naval Operations  
(Plans, Policy and Operations)

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Copy to:  
OPNAV (N3/N5, N096, and N091)  
OSD (ISA)

05 April 2000

**TEMPLATE DIPLOMATIC CLEARANCE REQUEST MESSAGE TO FLEET  
COMMANDERS FOR MILITARY/HYDROGRAPHIC SURVEY**

FM NAVOCEANO STENNIS SPACE CENTER MS//N31//  
TO COGNIZANT OPERATIONAL COMMANDER//  
INFO SECDEF WASHINGTON DC//FMRA//  
SECSTATE WASHINGTON DC//OES-OA//  
CNO WASHINGTON DC//N096/N3L/N5L/N3/N5//  
MSC CHAIN OF COMMAND//  
SHIP'S OPERATIONAL CHAIN OF COMMAND//  
COMNAVMETOCCOM STENNIS SPACE CENTER MS//N3//  
AMEMBASSY\_\_\_//  
USDAO\_\_\_//  
NIMA HQ BETHESDA MD//ATCN/OGCC//  
NAVY JAG WASHINGTON DC//10//

UNCLAS //N03120//  
MSGID/GENADMIN/NAVOCEANO//  
SUBJ/DIPLOMATIC CLEARANCE REQUEST - REQUEST FOR (COUNTRY)  
MILITARY/HYDROGRAPHIC SURVEY//  
REF/A/DOC/CNO WASHINGTON DC/NEW DATE//  
AMPN/REF A IS OPNAVINST 3128.9D AND PROVIDES GUIDANCE FOR SUBMITTING  
DIPLOMATIC CLEARANCE REQUESTS.//  
POC/\_\_\_//

RMKS/1. IAW REF A, FOLLOWING INFO SUBMITTED FOR USE  
IN OBTAINING DIPLOMATIC CLEARANCE FOR USNS \_\_\_\_\_ (OR A/C), (WITH  
NAVOCEANO DETACHMENT \_\_\_ EMBARKED,) TO CONDUCT  
MILITARY/HYDROGRAPHIC SURVEYS WITHIN (COUNTRY) TERRITORIAL WATERS.

- A. NAME AND TYPE OF VESSEL:
- B. GROSS TONNAGE, LENGTH, DRAFT OF SHIP, DESCRIPTION OF OTHER  
VESSEL:
- C. RADIO CALL SIGN AND EMERGENCY FREQUENCIES:
- D. OPERATING COMMAND, TACON AND OPCON AS APPLICABLE:
- E. PROJECT DESCRIPTION:
- F. DESCRIPTION OF DATA TO BE COLLECTED:
- G. EQUIPMENT TO BE USED:
- H. LOCATION OF PROJECT AREA, INCLUDING CPA TO FOREIGN TERRITORY:
- I. DATES OF SURVEY OPERATIONS:
- J. PROPOSED ITINERARY:
- K. SALUTING OR NON-SALUTING SHIP:
- L. COMMANDING OFFICER OR MASTER:
- M. NUMBER OF MILITARY AND CIVILIAN OFFICER AND CREW:
- N. NUMBER OF MEMBERS OF SURVEY PARTY:
- O. SENIOR SURVEYOR:
- P. FOREIGN PARTICIPATION AND SPECIAL REQUIREMENTS:
- Q. BENEFITS TO COASTAL STATE:



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2. OTHER ADDITIONAL MESSAGES AND CORRESPONDENCE (CONOPS, TECHNICAL SPECIFICATIONS, ETC) THAT WILL BE FORWARDED TO SUPPORT PROJECT:

BT

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**TEMPLATE DIPLOMATIC CLEARANCE REQUEST TO USDAO FOR  
MILITARY/HYDROGRAPHIC SURVEY**

FM COGNIZANT FLEET COMMANDER//  
TO USDAO \_\_\_\_\_//  
INFO SECDEF WASHINGTON DC//FMRA//  
SECSTATE WASHINGTON DC//OES-OA//  
CNO WASHINGTON DC//N096/N3L/N5L/N3/N5//  
MSC CHAIN OF COMMAND//  
SHIP'S OPERATIONAL CHAIN OF COMMAND//  
COMNAVMETOCCOM STENNIS SPACE CENTER MS//N3//  
NAVOCEANO STENNIS SPACE CENTER MS//N31//  
AMEMBASSY\_\_\_\_//  
USDAO\_\_\_\_//  
NIMA HQ BETHESDA MD//ATCN/OGCC//  
NAVY JAG WASHINGTON DC//10//

UNCLAS //N03120//  
MSGID/GENADMIN/\_\_\_\_\_  
SUBJ/DIPLOMATIC CLEARANCE REQUEST - REQUEST FOR (COUNTRY)  
MILITARY/HYDROGRAPHIC SURVEY//  
REF/A/DOC/CNO WASHINGTON DC/NEW DATE//  
REF/B/MSG/NAVAL OCEANOGRAPHIC OFFICE/DTG//  
AMPN/REF A IS OPNAVINST 3128.9D AND PROVIDES GUIDANCE FOR SUBMITTING  
DIPLOMATIC CLEARANCE REQUESTS. REF B IS REQUEST FOR SURVEY  
DIPLOMATIC CLEARANCE//  
POC/\_\_\_\_//

RMKS/1. REQ OBTAIN DIPLOMATIC CLEARANCE FOR \_\_\_\_\_ AS DESCRIBED REF  
B. PLEASE NOTE THAT THIS REQUEST IS FOR MILITARY (HYDROGRAPHIC)  
SURVEY WITHIN TERRITORIAL WATERS AND MUST BE CLEARED THROUGH THE  
MINISTRY OF FOREIGN AFFAIRS OR EQUIVALENT. THIS SURVEY IS NOT, REPEAT  
NOT, MARINE SCIENTIFIC RESEARCH. DUE TO LAW OF THE SEA CONCERNS,  
AVOIDANCE OF THE TERMS 'RESEARCH' OR 'SCIENCE' IS IMPERATIVE.  
2. REQUEST INFORM ALL ADDEES WHEN CLEARANCE IS GRANTED.

BT

05 April 2000

**TEMPLATE REQUEST FOR RAPID LITTORAL SURVEY  
EXERCISE AGREEMENT**

FM NAVOCEANO STENNIS SPACE CENTER MS//N31//  
TO CNO WASHINGTON DC//N096/N3L/N5L/N3/N5//  
INFO SECDEF WASHINGTON DC//FMRA//  
SECSTATE WASHINGTON DC//OES-OA//  
CNO WASHINGTON DC//N096/N3L/N5L/N3/N5  
MSC CHAIN OF COMMAND//  
SHIP'S OPERATIONAL CHAIN OF COMMAND//  
COMNAVMETOCCOM STENNIS SPACE CENTER MS//N3//  
AMEMBASSY\_\_\_//  
USDAO\_\_\_//  
NIMA HQ BETHESDA MD//ATCN/OGCC//  
NAVY JAG WASHINGTON DC//10//

UNCLAS//N03120//

MSGID/GENADMIN/NAVOCEANO//

SUBJ/REQUEST FOR RAPID LITTORAL SURVEY EXERCISE AGREEMENT WITH  
(COUNTRY)//

POC/

RMKS/1. REQ INITIATE RAPID LITTORAL SURVEY EXERCISE AGREEMENT WITH  
(COUNTRY).

2. THE FOLLOWING PLANNING ELEMENTS ARE SUBMITTED:

(A) COMMAND EXERCISING PROJECT CONTROL:

(B) IN COUNTRY ORGANIZATION THAT IS COOPERATING IN PROJECT  
AND POC:

(C) NAME AND LOCATION OF PROJECT AREA, INCLUDING COORDINATES OF ALL  
SITES OR STATIONS:

(D) INCLUSIVE DATES OF OPERATION AND TRAVEL ITINERARIES:

(E) BRIEF DESCRIPTION OF PROJECT:

- TYPE OF SURVEY TO BE CONDUCTED (MILITARY OR HYDROGRAPHIC):
- DATA TO BE COLLECTED, INCLUDING ANY BOTTOM SAMPLING

METHODS:

- SECURITY CLASSIFICATION OF THE PROJECT AND THE RESULTING

DATA/REPORT:

(F) EQUIPMENT TO BE USED INCLUDING TYPE/QUANTITY OF EXPLOSIVES, IF  
ANY:

(G) PERSONNEL: NUMBER OF MEMBERS OF SURVEY PARTY. AS APPLICABLE,  
NAMES, DATES OF RANKS, TITLES, OF COMMANDERS AND DISTINGUISHED  
VISITORS. NAME, TITLE, AND AFFILIATION OF SENIOR SURVEYOR.

(H) DETAILS OF COOPERATION:

- VESSELS/EQUIPMENT SOURCES
- DATA SHARING ARRANGEMENT

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Enclosure (3)